REMARKS

Claims 1-25 are pending in the application and all claims have been rejected.

Reconsideration of the claims is respectfully requested.

I. CLAIM REJECTIONS – DOUBLE PATENTING

Claims 1, 10 and 18 were provisionally rejected as unpatentable under the judicially created doctrine of double patenting over Claim 1 of U.S. Patent No. 10/955,904 (hereinafter "the '904 Patent). Applicant notes the Examiner's comments and provisional rejection. This rejection will be addressed at such time as one or another of the patents issue, when any distinctions in the actually-issued claims can be analyzed.

CLAIM REJECTIONS -- 35 U.S.C. § 102

Claims 1-4, 10-13 and 18-21 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2004/0093202 to *Fischer, et al.* hereinafter "Fischer". This rejection is respectfully traversed.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131, p. 2100-76 (8th ed., rev. 4, October 2005) (*citing In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990)). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. *Id.* (*citing Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)).

Claim 1 requires:

> 1. An apparatus, comprising:
> a cross correlator operable to receive a first audio signal and a second audio signal, the cross correlator also operable to cross correlate the first and second audio signals to produce a cross-correlated signal;
> at least one parameter identifier operable to receive the cross-correlated signal and identify a plurality of parameters associated with at least one of the first and second audio signals; and
> a score generator operable to receive the plurality of parameters and generate an indicator identifying an extent to which the first and second audio signals match.

The first of these limitations requires a cross correlator that correlates that cross correlates the first and second audio signals to produce a cross-correlated signal. This is not taught or suggested by the art of record. The Examiner alleges that this is taught by Fischer's abstract, but is incorrect:

> Disclosed are a computerized method and system for the identification of identical or similar audio recordings or segments of audio recordings. Identity or similarity between a first audio segment of a first audio stream and at least a second audio segment of an at least second audio stream is determined by digitizing at least the first audio segment and the at least second audio segment of said audio streams, calculating characteristic signatures from at least one local feature of the first audio segment and the at least second audio segment, aligning the at least two characteristic signatures, comparing the at least two aligned characteristic signatures and calculating a distance between the aligned characteristic signatures and determining identity or similarity between the at least two audio segments based on the determined distance.

As can been see, nothing in this passage teaches or suggests anything about producing cross-correlated signal. Fischer appears to compare "signatures" of the first and second audio

segments, and does not produce any kind of signal that is a cross-correlation of the first and second audio segments.

Claim 1 also requires a parameter identifier operable to receive the cross-correlated signal and identify a plurality of parameters associated with at least one of the first and second audio signals. This is also not taught or suggested by the art of record. The Examiner alleges that this is taught by Fischer's paragraph 0048, but is incorrect:

> [0048] Two signatures can be compared by measuring the distance between their optimal alignment. In general, the choice of the metric used depends on the orientation of the quantized density slices with respect to the time, frequency, and energy axis of the energy density. Examples for such distance measures are given in the description of the two embodiments of the invention. A decision rule with a separation value depending on the metric is used to distinguish identical from non-identical recordings.

It is clear that Fischer is comparing the signatures of two different signal segments, as contrasted with the parameter identifier of the present claims, that receives and examines a single cross-correlated signal, as shown in Figure 4 of the specification as filed.

As neither of these two limitations found in independent claim 1, and similarly in independent claims 10 and 18, are taught or suggested by Fischer, the anticipation rejection of all claims is traversed.

With regard to claim 3, the Examiner refers to "the combined teachings of Fischer et al and Abdollahi et al", which is an improper combination for an anticipation rejection.

Accordingly, the Applicant respectfully requests the Examiner to withdraw the § 102 rejection with respect to these claims.

CLAIM REJECTIONS -- 35 U.S.C. § 103

Claims 5-6, 14-15 and 22-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fischer in view of U.S. Patent No. 5,890,187 to *Asghar*, hereinafter "Asgahr." And further in view of U.S. Patent No. 5,774,851 to *Miyashiba, et al.*, hereinafter "Miyashiba."

Claims 7, 16 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fischer in view of Miyashiba.

Claims 8, 17 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fischer in view of U.S. Patent No. 5,845,247 to *Miyasaka*, hereinafter "Miyasaka". The Applicant respectfully traverses the rejection.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a prima facie case of obviousness. MPEP § 2142, p. 2100-133 (8th ed. rev. 4, October 2005). Absent such a prima facie case, the applicant is under no obligation to produce evidence of nonobviousness. *Id.* To establish a *prima facie* case of obviousness, three basic criteria must be met: *Id.* First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *Id.*

The limitations discussed above as not taught or suggested by Fischer are similarly not taught or suggested by Asgahr, Miyashiba, or Miyasaka, alone or in any motivated combination. Nor does the Examiner allege any such teachings in these other references. As such, all claims include limitations not taught or suggested by any art of record, alone or in combination, and so all obviousness rejections are traversed.

Accordingly, the Applicant respectfully requests the Examiner to withdraw the § 103 rejection with respect to these claims.

CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at ***wmunck@munckbutrus.com***.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

Date: May 22, 2007

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